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ABSTRACT

A discussion of compulsory attendance legislation and issues relevant to home schooling are presented in this report. The first section offers a literature review and discussion of the socialization and academic achievement arguments. Section 2 provides a chronologically ordered summary of cases that address such issues as qualifications of parents as teachers, student evaluation and certification, religious freedom, state educational standards, and special needs students. The third section presents an analysis of state laws in relation to compulsory attendance laws and the legal status of home schooling. State statutes are classified in terms of state regulation of home schooling, instructional matters, and student assessment. (13 references) (LMI)

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HOME SCHOOLING

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TABLE OF CONTENTS

Summary of Literature	1
Case Law	12
Statutory Analysis	39
Table of Cases	47

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HOME SCHOOLING

RELATED RESEARCH

The U.S. Constitution does not guarantee citizens the right to an education but delegates this power to the states in the Tenth Amendment. In an effort to ensure that children receive an education states enacted compulsory attendance laws. These laws were passed to address the problem of truancy, prepare American youth for sophisticated technical work, and teach children of immigrants English so they could understand American political, social and economic systems (Avner, 1989). Exceptions to these laws have been granted only for limited reasons such as 1) school suspension or expulsion; 2) quarantine; 3) marriage; or 4) attendance at a private school or receiving other acceptable forms of instruction (Harris and Fields, 1982).

In the past, because several states did not recognize home instruction as a way of satisfying the compulsory attendance laws, parents were prosecuted and sometimes jailed for educating their children at home (Lines, 1987). During the 1980's many states adopted new laws either legalizing home education outright or providing more freedom for home educators. These new laws took varying forms, from requiring parents to teach their children for a certain number of days or hours per year to requiring home school children to take periodic standardized achievement test and making various provisions for those who perform poorly on these tests. While no state actually made its laws more restrictive, forces opposed to home schooling pushed for more restrictive legislation in many states (Eidsmoe, 1989).

By the end of 1986 every state permitted home instruction in some form but the definition varies from state to state. The least restrictive laws call only for notification of the school district by home schooling parents while the most restrictive laws specify curriculum subjects and require home-school parents to be certified teachers. In many states the local school district must approve the family's request to conduct school at home (Avner, 1989). Gaining approval may be complicated due to the reluctance of school officials who may be convinced that some parents have neither the patience nor the ability to teach children well (Harris and Fields, 1982; Lines, 1987). Also, many superintendents are unwilling to allow families to teach children at home because they fear the schools will lose financial aid. But neither school legislation in the 50 states nor existing case law requires "attendance" to mean only bodily presence of a student in a school building. The intent of the law, both written and in established practice, to define "attendance" means taking part in an educational activity approved by the school. Local boards can interpret this idea in any way acceptable to their constituencies. They are free to register home-taught students in their schools, listing them as participants in a special program and collecting the proper amount of state aid (Holt, 1983).

The U.S. Supreme Court has accepted the states' role in promoting educational consistency in schools but on several occasions it has prevented the states from denying parents'

choices regarding the education of their children. When deciding a case, the court considers a number of factors including whether the parent is a certified teacher; if the instruction in a family group constitutes a private school; whether regular hours of study are maintained; the nature of the curriculum; if any provisions are made for social development; whether standards that exist within the district to determine equivalency; and whether the prevailing statute is broadly or narrowly interpreted (Harris and Fields, 1982).

On four occasions the Supreme Court has considered compulsory attendance laws and each time it has struck down these laws as unconstitutional. The four cases are: 1) Meyers v. Nebraska (1923); 2) Pierce v. Society of Sisters (1925); 3) Farrington v. Tokushiga (1927); and 4) Yoder v. Wisconsin (1972). None of these cases fully decides the difficult question of to what extent the state may regulate home schools (Eidsmoe).

In Meyer v. Nebraska (262 U.S. at 400, 43 S.Ct. 625, 1923) the court ruled that the natural obligation of parents to provide education for their child corresponds to the parent's right to control over the child. In Pierce v. Society Sisters (268 U.S. 510, 1925) the issue was whether parents had the right to send their children to private schools. The court answered affirmatively and reaffirmed this holding in Windsor Park Baptist Church v. Arkansas Activities Association (658 F.2d. at 619, 1981) when it held that the state may not standardize education by forcing children to accept instruction only from public school

teachers (Harris and Fields, 1982). In the Yoder v. Wisconsin (1972) case the Supreme Court supported Amish families who wanted to remove their children from school after the eighth grade because the compulsory attendance statute violated their First Amendment right to freely practice their religion (Avner, 1989).

Compulsory attendance laws were intended to punish parents who fail or refuse to educate their children, not to punish those who provide equal or superior education to that of public schools (Harris and Fields, 1982). Many legal scholars now believe that the family's interest should prevail in the matter of home schooling and that the state's interest can be met in other ways (Lines, 1987). Dr. John Eidsmoe believes that six good reasons exist for allowing substantial freedom for home educators: 1) restrictive laws may make criminals out of otherwise law-abiding citizens; 2) restrictive home school laws are unnecessary - there is no correlation between restrictive laws and a quality education; 3) restrictive home school laws drive home school families underground due to harassment by the state; 4) prosecutions are expensive and traumatic to everyone involved and the ones to suffer most are the children; 5) restrictive laws lead to selective prosecution because restrictions vary from state to state; and 6) restrictive laws stifle parental rights and academic freedom.

SOCIALIZATION

"The socialization issue has become the greatest point of contention for those against home schooling" (Williamson, 1989).

Several points are made by individuals opposed to home schooling concerning socialization. Omer P. Norton of the Maine Department of Education describes education as a process which involves living in society and hearing other people express other ideas. He says instruction in isolation cannot compare with a child being instructed in a group (Harris and Fields, 1982). In addition, Harris and Fields (1982) stated in "Outlaw Generation: A Legal Analysis of the Home-Instruction Movement" that parents are discovering students who are consistently taught at home can become very lonely, and the home curriculum provides little cure for loneliness.

On the other hand, there are those who see home-schooling as providing superior socialization, as compared to socialization of institutional-schooling. John Holt says, "Schools are not only destructive of intellect but character. With few exceptions, the social life of our schools is meanspirited, competitive, status seeking, snobbish, cruel, often violent, and full of talk about those who went to whose party and who did not" (Harris and Fields, 1982). Therefore, "home-schooled children escape much of the bombardment from peer pressure experienced in the conventional classroom, thus allowing them to develop personal moral integrity" (Taylor, 1989).

Home school advocates see institutionally schooled children as being conditioned by the school situation into interacting almost exclusively with same aged peers. This is seen as a negative socialization aspect by home-schoolers, for studies have

shown that the excess peer group association that institutionalized schooling provides promotes unnatural peer dependence and negative socialibility (Williamson, 1989).

Home schoolers also believe that our society has become conditioned into believing that the behavior of institutionally schooled children is normal. But home schoolers say that society should realize that this average behavior is common, simply because the average child is commonly schooled. Institutional schools are seen by home schoolers as the state's societal training ground which seeks to mold the minds of children to be state-serving, and which often perpetuates sameness while destroying uniqueness. Many home-schoolers believe that "the unique individual has become a dying breed because of the zombie-like production lines, other-wise known as the institutional schools" (Williamson, 1989).

If the concern is of home schooled children missing out on group involvement, it should be acknowledged that many home schooled children belong to clubs and other youth organizations. Also, home schooled children are able to interact more frequently with actual society "because home-school teachers are able to involve their two or three students in many socializing activities more readily than a classroom teacher with 25 or more children" (Taylor, 1989). This concern of group interaction also was raised in the case of State v. Mass. (90 N.J. Super. 382,231 A.2d 252, 1967) from which a new definition of equivalent instruction developed requiring only academic equivalency - not

equivalency in social development derived from group interaction (Harris and Fields, 1982).

Evidence for social development of home-schooled children is scarce, but what does exist suggests superior development (Harris and Fields, 1982). Standard tests of social adjustment, such as the Piers Harris Children's Self-Concept Scale, have found home schooled students to be socially confident and well adjusted (Williamson, 1989).

Home schoolers believe that home-centered socialization is superior to institution-centered socialization, and defend their rights to provide home-centered socialization by emphasizing that original laws concerning education were to ensure an equal opportunity to a quality education, but not to mandate institution-centered socialization through institution-centered education. Home schooling families wonder why they have to defend their position so much, and why the home and family have such a bad name, since the family has been "the backbone of our society and a springboard to multitudes of successful lives in the past" (Williamson, 1989). Thus, following this line of thought, the value of socialization through home schooling can be summarized by the following statement: "The home is the basic unit of society. To build the home is to build society... Home schooling builds homes. Home schooling builds societies" (Williamson, 1989).

ACADEMIC ACHIEVEMENT

Many success stories exist of home schooled students who

have attained academic excellence. It is not uncommon for these students to reach levels of genius academically. According to some home schooling advocates, "the occurrence of genius has been squashed due to the institutional schooling process (Williamson, 1989).

The academic success or failure of home schooling is often the main focus of those assessing home schooling. However, anecdotal examples in addition to test data and other studies provide examples of academic successes for home schooling. "A recent success for home schooling is the admission of a young man who had been taught entirely at home to Harvard University in 1984. His brother was also admitted to Harvard in 1986" (Lines, 1987). Testing data reported from many states also reveal that students educated at home test at comparable or higher levels as compared to students taught in conventional settings. As reported in an article by Patricia Lines (1988), "Alaska, which has tested home schooled children for years, finds them performing above average on nationally standardized tests." J.F. Rakestraw (1988) conducted a study in the state of Alabama which examined the Stanford Achievement Test scores of 84 home schooled students and found that they scored as well as their public school peers. In California, a study by M.M. Delahooke comparing a group of private-school (as opposed to public school) students yielded the same positive results as that of Rakestraw's study. Reports from the state departments of education in Oregon and Tennessee also reveal positive data for home schooling. "The

Oregon Department of Education (1988) reported that 73% of 1,658 home schooled 1987-88 scored above the 50th percentile on standardized achievement tests," while "the Tennessee Department of Education (1988) reported that the 244 home schooled during 1987-88 averaged on the SAT at the 78th percentile in reading and at the 69th percentile in math" (Ray, 1990). Also in the state of Washington, where the law requires an annual assessment of home-schooled students, the following is a report of 1987 home-schooled students tested by the Stanford Achievement Test series:

> The median scores were in the respectable 65-66 percentile range (N = 873), with the highest scores in science (70%ile), and in verbal areas of listening (74%ile), and vocabulary (79%ile). The lowest scores were in math computation (42%ile), but math application scores were notably higher (65%ile). It appears that home schoolers, as a group, are doing well. Fears that home schooling children are at an academic disadvantage compared to conventionally educated students are not confirmed (Wartes, 1989).

Another study of mention was conducted by Quine and Marek (1988) which examined home school students in terms of intellectual development. The study compared home-schooled students to students of a school specifically designed to promote intellectual development. The findings revealed no significant differences in intellectual attainment between the two groups. However, "the findings also suggested that home educated students

move into formal thought five to ten years earlier than the national average" (Ray, 1989).

Thus, the research on academic achievement and home education "shows the home educated doing equal to or better than their conventional school peers," with a "crude synthesis of the achievement levels of the home educated typically showing them to be about .50 standard deviation above average, a practically significant value" (Ray, 1990). It is also reported that many home schooled children work towards and receive high school diplomas, with some proceeding to colleges and universities. Many colleges and universities are beginning to recognize the significance of these students and are making exceptions to accommodate them. And there are the cases of many home-schooled students who did not bother to obtain their high school diplomas, but passed college entrance exams quite successfully (Williamson, 1989). According to Kerri Williamson, author of Home Schooling - Answering Questions, "It is becoming the rule rather than the exception for home schooled students to take the top academically."

BIBLIOGRAPHY

Avner, J.A. (1989). Home Schoolers: A Forgotten Clientele? School Library Journal, 29-33.

Eidsmoe, J. (1989). Home Education, The Law, and The Constitution. Private School Monitor, 11(1): 4-6.

Harris, J.J. and Fields, R.E. (1982). Outlaw Generation: A Legal Analysis of the Home-Instruction Movement. Educational Horizons, 61(1): 26-31, 50.

Holt, J. (1983). How Schools Can Cooperate with Home Schoolers. Education Digest, 49 (October): 2-5.

Knowles, J.G. (1989). Cooperating with Home School Parents - A New Agenda for Public Schools? Urban Education, 23(4): 392-411.

Lines, P.M. (1987). An Overview of Home Instruction. Phi Delta Kappan, 68(7): 510-517.

Mayberry, M. and Knowles, J.G. (1989). Family Unity Objectives of Parents Who Teach Their Children: Ideological and Pedagogical Orientations to Home Schooling. Urban Review, 21(4): 209-225.

Ray, B.D. (1989). Research on Home Education. Private School Monitor, 11(1): 7-9.

Ray, B.D. (1990). Social Capital, Value Consistency, and the Achievement Outcomes of Home Education. Paper presented at the Annual Meeting of the American Educational Research Association, April 16-20, Boston, MA.

Taylor, J.W. (1989). Socialization: What Kind Do You Want? Private School Monitor, 11(1): 11-13.

Van Galen, J.A. (1988). Becoming Home Schoolers. Urban Review, 23(1): 89-106.

Warten, J. (1989). Home Schooler Outcomes Within Washington State. Private School Monitor, 11(1): 13-14.

Williamson, K.B. (1989). Home Schooling - Answering Questions, Springfield, IL: Charles C. Thomas.

Section 2

Case Law

The following is a summary of cases addressing the issue of home schooling. The data have been organized chronologically and there's been no attempt to separate out the information in categories.

The State v Peterman, 32 Ind. App. 665 (1904). Clarence C. Peterman was prosecuted for violating the compulsory attendance laws in the State of Indiana. The law provided that those who were parents or guardians of children between the ages of 7-14 had the responsibility to send their children to public, private or parochial school. The defendant elected to remove his child from public school and provide instruction for her in the home of a former licensed teacher, Mrs. Hugelheim. She had left teaching in order to get married. The child was instructed in her home following the identical instruction hours of the public schools (8:30 am to 4:00 pm). She was allowed the same recess and lunch periods as provided by public schools and the instruction consisted of the same curriculum provided in the public schools. The child appeared to have advanced in her studying as fast or faster than she did while she was attending the public schools.

The court held:

> "If a parent employes and bring into her residence the teacher for the purpose of instruction of his child . . . and such instruction is given as the law contemplates, the meaning and spirit of the law have been fully complied with." (32 Ind. App. 665, 669)
>
> ". . . The law was made for the parent who does not educate his child and not for the parent who employes a teacher and pays him out of his private purse, and so places within the reach of the child the opportunity and means for acquiring an education equal to that obtained in the public schools of the state." (32 Ind. App. 665, 671)

Pierce v. Society of Sisters, 268 US 510, 45 S.CT. 571 (1925). The State of Oregon had interpreted its compulsory education laws to require all normal school children to go to public schools. The act, effective September 1, 1926, required parents or guardians of children between the ages of 8 and 16 to send their children to public schools for a complete school year. The law in effect prevented parents and guardians from sending their children to private of parochial school in lieu of public schools. The Society of Sisters alleged that the law conflicted with the rights of parents to choose schools where their children received appropriate "mental and religious training." (268 US 510, 532) At issue was both a property and liberty interest of the parents and proprietors of the school. The court held:

> ". . . We think it entirely plain that the act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. . . The fundamental theory of liberty upon which all government and this union repose excludes any general power of the state to standardize his children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state: those who nurture him and direct destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."(268 US 510, 535)

People v. Levisen, 90 N.E.2d 213 (S.CT. Ill. 1950), involved the parents of a seven year old child. The parents were Seventh Day Adventist who felt their child should not be educated in a setting where she would be in competition with other children and where the atmosphere necessitated by their faith in the Bible could not be obtained in the public schools. The parents felt that the mother was the best teacher available and that nature was the text lesson book. The child's father was a minister in the religion. The mother had been teaching the child her third grade lessons at home for 5 hours a day. In addition she taught the child vocal music. The child had regular hours for study and recitation and she was showing proficiency in her studies. The state law required children between the ages of 7 and 16 to attend public school in a district where the child resided. The law did allow for attending private or parochial schools where children were taught a curriculum corresponding to the ages and grades of the public schools. The court held:

> "If a parent employs and brings into her residence a teacher for the purpose of instructing his child or children, and such instruction is given as the law contemplates, the meaning and spirit of the law have been fully complied with. This would be the school of the child or children so educated, and would be as such a private school as if advertised and conducted as such. We do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or more a school." (90 N.E. 2d 213, 215)
>
> "Those who prefer this method as a substitute for attendance at the public school have the burden of showing that they have in good faith provided an adequate course of instruction in the prescribed branches of learning. . . . No parent can be said to have a right to deprive his child of educational advantages at least commensurate with the standards prescribed for the public schools, and any failure to provide such benefits is a matter of great concern to the courts." (90 N.E. 2d 213, 215-16)

Sheppard v the State of Oklahoma, 306 P. 2d 346 (CT. App. Oklahoma 1957). The defendants were convicted in the common pleas court of Tulsa County for violating the compulsory attendance law. The parents did not send their 8 year old child to public or private school. The compulsory attendance law provided that a child should attend some public or private school or other school if the other school or means of education would provide instruction for periods of two thirds of the time the public schools of the district were in session.

In the instant case the two children were held out of public schools and were taught in the home by the mother for 5 days per week, 5 hours a day. She established that the training had been in the dining room and that she had taught them Bible Study, reading, writing, arithmetic and drills that her elder daughter played the piano and that she taught the daily routines of brushing teeth, talking about cleanliness of the body, general health and value of different foods and science and that she had books that they had used in school. The mother also offered evidence of being a qualified teacher. The mother took the children out of school because her son had been frightened by a teacher who had grabbed him by the hair and slammed him against a brick wall and the principal had refused to reprimand the teacher. The parent wanted more personal attention and instruction than her children were getting in the public school. The court citing one of its other decisions concerning compulsory attendance provided:

Garren County v Thompson, 24 Okl. 1, 103 P. 2d 578. "At common law the principal duties of parents to their legitimate children consist in their maintenance, their protection, and their education. While the municipal laws took care to enforce these duties, yet it was presumed that the natural love and affection by the Providence and the breast of every parent had done so more effectively that the law. For this reason, the parent, especially the father, was vested with the supreme control over the child including his education. Except where modified by statute, that authority still exists."(306 P 2d 346, 352)

State of Missouri v Cheney, 305 S.W. 2d 892 (CT. App. Missouri, 1957) The defendants were charged with violation of the compulsory attendance law requiring parents having charge and control or custody of a child between the age of 7 and 14. The law required " . . .That every parent having charge, control or custody of a child between the ages of 7 and 14 years shall cause such child to attend regularly some day school not less than the entire time the school which said child attends is in session, or shall provide such child at home with such regular daily instruction as shall be substantially equivalent at least to the instruction given the children of like age at said day school in the locality in which said child resides." (305 S.E. 2d 892, 892-893) The case involved a child Stephanie Chaney, age 7, who failed to attend public school. There was no allegation that the defendants did not provide the child schooling at home.

The facts as presented by the court do not indicate if the child was being taught at home by the parents and the case was reversed and remanded because of incorrect proceedings in the criminal matter.

State of New Jersey v Massa, 231 A. 2d 252 (New Jersey, 1967) The case involved a parent who had taught her child at home for 2 years. The mother testified that her motives were a desire for the pleasure of seeing her daughter develop her mind. She wanted to be with her child when the child was more alive and fresh. She maintained that in school much of the time was wasted and that at home a child could make better use of her time. The mother was a high school graduate and the father was an Interior Decorator, neither held a teaching certificate.

The state stipulated that a child could be taught at home and that the parents need not be certified by the state in order to teach at home. The sole issue in the case was that of equivalency.

Had the defendants provided their daughter with an education equivalent to that provided in the Pequannock Township school system.

This is an important case in home schooling because the court defined equivalent by stating:

> " . . . This court holds that the language of the New Jersey statute, N.J.S.A. 18:14-14, providing for "equivalent education elsewhere than at school," requires only a showing of academic equivalence. As stated above to hold that the statute requires equivalent social contact and development as well would emasculate this alternative and allow only group education, thereby eliminating private tutoring or home education." (231 A. 2d 252, 257)

Wisconsin v Yoder, 406 US 205, 92 S. CT. 1526 (1972) This case involves members of the conservative Amish Mennonite Church, who were convicted of violating Wisconsin's compulsory school laws when they refused to send their children to public or private school beyond eighth grade. The respondents felt that by sending their children to high school they would not only expose themselves to the dangers of the censure of the church community but, would endanger their own salvation and that of their children.

The court established that there was no doubt as to the power of the state having a responsibility for the education of it's citizens and that the state could impose reasonable regulations for the control and duration of such basic education. The court then cited Pierce v Society of Sisters. The court went on to establish that the state interest was not totally free from a balancing, when it impinged upon other fundamental rights and interests such as those specifically protected by the free exercise clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children. The court after reviewing the history of the Amish, upheld their right to remove their children from the public schools at the completion of the eighth grade. The court then held:

> "Nothing we hold is intended to undermine the general applicability of the state's compulsory school attendance statutes or to limit the power of the state to promulgate reasonable standards that, while not impairing the free exercise of religion, provide for continuing agricultural, vocational education under parental and church guidance by the old order Amish or other similarly situated. The states have had a long history of amicable and effective relationship with church sponsored schools, and there's no

> basis for assuming that, in this related context, reasonable standards cannot be established concerning the content of the continuing vocational education of Amish children under parental guidance, provided always that state regulations are not inconsistent with what we have said in this opinion."

Cleary v Lash, 401 N.Y. Supp. 2d 124 (Family Court NY, 1977) The parents, Ernest and Barbara Lash, refused to send there twelve year old child to the public schools. The child was handicapped with emotional problems but was able to attend school in a regular classroom setting. The school authorities wanted to place the child in a school for multiple-handicapped children with emotional and/or neurological problems. The mother was opposed to the recommendation and refused to allow her child to attend the special school. The school system brought an action against the parents under the neglected child act. The compulsory attendance law of the state required each minor child from 6 to 16 years of age to attend full time instruction. The act provided that instruction given to a child elsewhere than in a public school shall be substantially equivalent to the instruction given to minors of like age and attainments in public school.

The parents did not want their son involved in the public schools and as a result provided more education at home for their son than was required by the state rules. The parents had contacted Adelphi University and through the Learning Disability Center made contact with two certified teachers. Both teachers were certified to teach grades K-6; one of the teachers was certified to teach Special Education. Together the two teachers prepared a curriculum for Ernest covering all the necessary subjects and began teaching him at home. They spent from 14 to 20 hours a week on a five day a week schedule. The court established:

> "A parent need not avail himself of formal education facilities for a child in order to satisfy the requirements of the law, it being sufficient that a systematic course of study be undertaken at home and that the parent render qualified quality instruction. . . . There is no provision in the educational law which prohibits instruction of children at home. The object of the compulsory education law is to see that children are not left in ignorance, that from some source they receive instruction that will fit them for their place in society." (401 N.Y. Supp. 2d 124,126)

City of Akron v Lane, 416 N.E. 2d 642 (CT. App. Ohio 1979) The defendant Richard T. Lane, had a daughter, Stacey, who was hearing impaired. Stacey attended the Akron public schools, but because of her impaired hearing she was initially placed in a special education class, where the oral method of teaching was used. Later, she was placed in a special education class where total communication method was used. The parents were dissatisfied with Stacey's educational progress and the special education classes, they took the position that the law require that Stacey be placed in a regular classroom with the aid of an interpreter. The Akron board of education refused to place the child in a special classroom with an interpreter.

The defendants decided not to send their daughter to the special school and instead hired a tutor to provide instruction for Stacey at home. The parents attempted to secure approval of the home instruction but the approval was not obtained. The court citing the Ohio statutes provided:

> "Mere equivalence between home instruction and public education is not an exception listed in the statute. The allowance of home instruction exemption is discretionary with the District Superintendent of schools subject to state direction. . . subject to appeal to the juvenile court . . . Whether defendant's home instruction program is equivalent to the education provided by the Akron Board of Education was, therefore, immaterial to the instant prosecution." (416 N.E. 2d 642,644)

> "The defendant formed the belief that his daughter's educational progress in the public school system was unsatisfactory based upon what he felt her progress should be. We cannot believe that this dissatisfaction overbalances the state interest in enforcement of the compulsory educational laws. . . . Whether the home instruction program was equivalent to, or substantially in compliance with, the state minimum standards was not germane to the case.
>
> . . .We believe that the term school, in the context of these statutes, refers to a school of the state, . . . and that the term special education program, in the context of the statute, refers to a special education program operated persuant to state board of education standards and authorization. . . . The trial court could properly have found that the defendants home program was neither a school nor a special education program under the statutes: and this, coupled with the Superintendents disapproval of the program, was sufficient to prove the offense." (416 N.E. 2d 642, 645)

State of Iowa v Morehead, 308 N.W. 2d 60 (S.CT. Iowa, 1981) The court held:

> "Equivalent instruction. The term equivalent is defined to mean equal enforce or amount . . . a fair reading of section 299.1 indicates that the term equivalent instruction refers back to the use of public school . . . Thus equivalent instruction is instruction which is equal in kind and amount to that provided in the public schools. . .
>
> A party challenged in a compulsory education law as violation of the free exercise clause of the first amendment has the burden to show how the law infringes upon the parties religious beliefs." (308 N.W. 2d 60,64)

State of West Virginia v Riddle, 285 S.E. 2d 359 (W. VA. 1981) The defendants failed to send their two children to public school. They were arrested and tried before a magistrate and convicted. The defendants appealed on the grounds that the compulsory law was unconstitutional as a violation of their rights under the First and Fourteenth Amendments because it abridged the free exercise of their religion.

The parents are "Biblical Christians" who belong to a Methodist sect called the Wesley which is separate from the main stream Methodist church. Biblical Christian means one who believes in the Bible as God's Holy Word. As a result, they dress modestly and do not wear make-up or jewelry and a very important tenant of their belief is that one who sins after being saved looses his or her salvation. The court stated that "In short, they find themselves separated, and at odds with, values of the world." (285 S.E. 2d 359, 361)

The defendants for a while enrolled their children in a school called the Emmanuel Christian Academy. They disagreed with the school's teaching of the doctrine that once a sinner is saved he remains saved even if he sins again. The defendants strongly believe that a person may be saved once but if he ever sins again, he will be lost. The parents perceived the public schools like television as a pernicious influence on the young and thus preserve their children from any false sense of spiritual security. As a result, the Riddle's began teaching their children at home.

The defendants never requested the county Superintendent to approve their home as a place of instruction under the exemptions provided by the West Virginia statues. The mother was formerly educated through the twelfth grade but she was not a certified teacher in the state of West

Virginia. Standardized test indicated that she was intelligent. The textbooks and other educational materials she used in the curriculum conformed with materials that were distributed by a certified educational organization located in Prospect Heights, Illinois. The Illinois company prepared and corrected homework and tests and provide lesson plans to the parents. The children were taught in a formal classroom setting from 8:30 am to 3:00 pm daily and they fulfilled the required the 180 days of instruction per year. The court in ruling against the defendants provided:

> ". . . It is not appropriate for a person entirely to disregard the statute, await criminal prosecution, and then assert a first amendment defense. The Yoder case emphatically does not imply that the free exercise clause is an absolute bar to any intrusion whatsoever by the state. (285 S.E. 2d 359, 365)
>
> There can be little doubt that on occasion the states interest will override even the most sincerely held religious convictions. . . Consequently not withstanding the strong language of Yoder, since that case arose out of an entirely different actual context, this court holds that sincerely held religious convictions are never a defense to total noncompliance with the compulsory school attendance law. (285 S.E. 2d 359, 365)
>
> . . . None the less, we do not note that the statute requires a person who is "qualified to give instruction" and not a correspondence school. Regardless of the quality of prepared instruction materials, there is no substitute for an educated teacher who is capable of answering questions and guiding inquiring minds into the new and uncontimplated directions to which any well prepared material should inevitably lead. . . We find it inconceivable that in the twentieth century the free exercise clause of the first amendment implies that children can lawfully be sequestered on a rural homestead during all of their formative years to be released upon the world only after their opportunity to acquire basic skills have been foreclosed and the capacity to cope with modern society has been so undermined as to prohibit useful, happy or productive lives." (285 S.E. 2d 359,366)

State of Oregon v Bowman, 653 P. 2d 254 (CT. App. Oregon, 1985) The defendant became dissatisfied with the education of her two children and with permission of the school district removed her children from the public schools and taught them herself at home. The defendant's children then went back into the public school system where they were given complete credit for their home study. Subsequently, the defendant again withdrew her children, then in the eighth

grade, from the public schools again with the consent of the Superintendent and resumed teaching at home. She maintained contact with the school district and the children took achievement tests provided by the school.

The family changed residences necessitating a change of school systems. In the new system, the parent contacted the school district requesting permission to continue teaching her children at home. The school responded that permission to teach a child at home could be granted under conditions that the child be presented at the high school for registration and testing to determine placement in the proper course of study. The system provided that a program would be provided for the parents use in the home. The school system provided that the high school would not grant a diploma and that the child would have to seek a certificate of equivalency from the state.

The defendant objected to the requirements but, she none the less complied. She objected stating that in the previous school she had not had to meet such standards. The defendant was informed that she had to present her child at school for testing. She refused. Later, the Superintendent wrote a letter to her revoking her permission for home teaching and ordering her to enroll her child for full time instruction in the school. The court in ruling against the defendant provided:

> ". . . The legislature apparently believed that private schools, as institutions established for educational purposes, will satisfy the legislative purpose with minimum state over site, while teaching by a parent or a private teacher may be abused by some parents in avoidance of both the legislative purpose and the responsibility to educate their children. We agree with the defendant that the two classifications . . . are treated differently, but this difference in treatment is not an improper legislative classification. . . . The statutory requirements that the child be tested . . . is so the Superintendent can determine whether the child is being taught properly on the basis of the test prepared by the State Board of Education. . . We find no improper delegation in the statute requirements that the State Board of Education prepare an examination for children taught by a parent or private teacher and that the local Superintendent determine whether such a child is being properly taught." (653 P. 2d 254, 258)

In re Monnig, 638 S.W. 2d 782 (CT. App. Missouri, 1982). The action brought against the parents of three children because they did not require the children to regularly attend some school or alternative to school by providing them with daily home instruction during the usual hours of school. The action was brought under the standard of neglect of a parental duty to educate their child.

It was stipulated that the children were not enrolled in public or other formal school. The authorities had judged that the home study was not equivalent to school instruction and this was also stipulated. It was established that the children had enrolled in school but then discontinued attendance.

The mother indicated to the school truant officer that the children were in the process of enrollment in the Christian Liberty Academy for instruction by correspondence. The children were tested for grade placement and were awaiting delivery of educational materials. The daily regime of the instruction consisted of prayer, pledge to the flag, scripture, mathematics, reading, spelling, science, Bible, geography, physical education and economics.

The trial court ruled that the children were in need of care and treatment of the juvenile court for failure by the parents to educate them as required by law. The custody was placed with the juvenile officer but the children were allowed to remain in the parents home as long as they were enrolled and attended public schools.

The appeal court overruled this decision and remanded with the direction that on retrial the juvenile court was entitled to the witness of the parents and that the parents were bound to respond unless they invoke the protection of self incrimination.

Grigg v Common Wealth of Virginia, 297 S.E. 2d 799 (S.CT. Virginia, 1982). The issue of the case was for the parents, not approved as tutors or teachers persuant to the Virginia code, to qualify for the private school exemption by teaching their children at home. The children of Mr. and Mrs. Grigg were not enrolled in the public schools. After a hearing, the court found that the children were in need of school and placed them on unsupervised probation for a period of twelve months, on the condition that they regularly attend private, public, denominational or parochial

school or be taught at home by a tutor or teacher with qualifications provided by the State Board of Education. Though the children were under order to attend school within three days following the hearing, neither child was enrolled.

The parents sent a letter to the Superintendent stating that the children were being instructed in a private school named "Arc II" which the parents had established in their home. The parents had not sought or received approval by the state or local authorities as a qualified tutors or teachers. The parents established that they both taught the children, though the mother was the principle instructor. The father was a high school graduate and the mother had obtained her high school diploma from a correspondence school. The parents contended that they had withdrawn the children from public school because they did not believe they were receiving an adequate education. They did not approve of the language and violence present in the schools, and they deplored the lack of morality in the public school setting. The parents indicated that they had employed the "Calvert School" program using teaching materials included in the "Calvert Home Courses." The children received instruction daily from 8:00 am to 4:00 or 5:00 pm during the school week. They were taught "everything that they had on a daily basis in the public schools and some extra things." The court held:

> ". . . The general assembly clearly created separate and distinct categories of exemption from public school attendance - private schools and home instruction representing two such categories. With respect to these two categories, it was the obvious legislative intent that one exemption should operate in one set of circumstances and the other in a different set . . . Equally clear is the legislative intent that home instruction by an unapproved tutor or teacher would not qualify for exemption under any circumstances . . . In permitting home instruction only by a qualified tutor or teacher, the general assembly has declared that such instruction by unapproved by persons shall be impermissible." (297 S.E. 2d 799, 803)

In the interest of Matthew Sawyer, 672 P. 2d 1093 (S.CT. Kansas, 1983). This case involved two children, one eight years old and the other eleven years old. The parents were dissatisfied with the children's progress in the local school and they organized their own private school, incorporating under the name of Longview School, Inc. The school was located in their

home. It commenced to operate at the beginning of the 1982-83 academic year. The school was not accredited nor had it been approved by any governing body of the state. It was registered as a private elementary with the State Board of Education. There were two additional siblings, ages four and twenty-two months, that were in the home during the period of instruction. The mother was the sole baby sitter for all four children during the day and the only teacher in the "Longview School". The courses taught included reading, writing, arithmetic, geography, spelling, English, grammar and composition, history of the United States and of the State of Kansas, duties of citizenship, health and hygiene.

The mother did not have a college degree, a teaching certificate, nor teaching experience. She had one half year of college in education. The court found:

> "Longview School, Inc., is in the Sawyer home. It it unaccredited. The only students are Matthew and Ann Sawyer. Bonnie is the teacher. She is uncertified with no teaching experience. She combines a baby sitting of two small children with her attempt to teach Matthew and Ann. There is no testing, planning or scheduling. The only goal of the arrangement is to extricate Matthew from his failure in public school. Ann is a pawn in the struggle. This will not suffice. We find the Sawyer's plan, though well intended, a thinly veiled subtrafuse attacking compulsory school attendance. If such a family arrangement will serve as a substitute for school, there is no compulsory attendance. Clearly, the legislature intends to maintain compulsory education. (672 P. 2d 1093, 1097)
>
> . . . The Iowa State Supreme Court has held education is not a fundamental right, but rather it is to be regarded and reviewed as any social and economic legislation. . . . The standard of review to be applied then, is whether the state's system has some rational relationship to a legitimate state purpose." (672 P. 2d 1093, 1098)

Delconte v The State of North Carolina, 308 S.E. 2d 898 (CT. App. N.C., 1983) The Delcontes have two school age children whom they refuse to enter into the public schools. While living in New York, their former residence, they requested and received permission from the local school board to teach their two children at home. When they moved to North Carolina, they continued to teach their children at home. The parents were deeply religious people who believed that the Bible commanded parents teach and train their children at home.

The father testified that his objections to the public schools were both religious and sociopsychological. The instruction provided for the children was reading, writing, arithmetic skills, chores, play time and Bible study. There was a room set aside in the home as a classroom. It was equipped with textbooks, chalkboard and desks. The parents determined the level and type of instruction for the children by referring to the instruction provided children in similar public and private school settings. The parents called their home school the "Hallelujah School." They were notified the state would not acknowledge their home as a non-public school within the meaning of the law because home instruction could not qualify as approved non-public school in the State of North Carolina. The court held:

> "In order to determine whether a state is unconstitutionally infringing a citizen's first amendment right, a court must determine: 1) whether a sincere religious belief exists and is infringed by the state, and 2) if so, whether there is a state interest of significant magnitude to override the interest claiming protection under the free exercise clause. (308 S.E. 2d 898, 903)
>
> Assuming, arguendo, that plaintiff had a protected belief, we hold that the state has an overriding interest in assuring that the plantiff's children are educated. The State of North Carolina has compelling interest in providing access to education for all, in order to prepare citizens to participate effectively and intelligently in our political system. . . . Therefore, the states interest in compulsory education outweighs plaintiff's interest in educating his children at home because of his religious and sociopsychological beliefs." (308 S.E. 2d 898, 904)

Delconte v State of North Carolina, 329 S.E. 2d 636 (S.CT. North Carolina, 1985)

Delconte II was granted a rehearing on a petition for discretionary review by the Supreme Court of North Carolina. During the course of the review, the court reversed the North Carolina Court of Appeals. The North Carolina Supreme Court added to the facts of the case with the following:

> "The Delconte's disagreed with some teaching of the public schools. They did not believe in evolution, and feel that their children should not be exposed to it since it was contrary to the Bible." (329 S.E. 2d 636)

Mr. Delconte explained his psychosociological basis for home instruction as his feeling that sending children from home at an early age signifies to them rejection by their parents and that

young children are too susceptible to understand influences of both teachers and other students. He felt that children should not be exposed to the community at large, either in or out of school, until they could have more of an effect on their environment than their environment could have on them. The court then reviewed the authorities on home schooling. (329 S.E. 2d 636. 642-645) The court pointed out that California, Florida, Oregon and Virginia had statutes which exempted school age children from attending public schools if they attended either private or home schools. The court following its review held:

> "These laws provide that attendance at "private school or school of religious charter" or at a "qualified non-public school" satisfies the requirements of compulsory school attendance. These laws eliminate the requirement that teachers or curriculum at these schools be approved by any state or county official: but they require these schools to comply with certain attendance, health and safety standards, to administer certain tests, and to provide certain information to an authorized state representative. Nowhere in the recent statute is the word "school" defined.
>
> The upshot of this historical review is that we find nothing in the evolution of our compulsory school attendance laws to support that the word school when used by the legislature in statutes varying on compulsory attendance, evidences a legislative purpose to refer to a particular kind of instructional setting. (329 S.E. 2d 636, 646)

In the Matter of John Kilroy, 467 N.Y. Supp. 2d 318 (N.Y. Family Court, 1983) The mother and stepfather of two children established home schooling. They appeared before the court on a petition of neglect. Under the direction of the court a committee on evaluation of non-public schools inspected their home instruction and the curriculum used. The committee approved the home school but indicated that there needed to be additional visits as the children matured. The litigation arose as a result of a request by the Superintendent for a subsequent visit to the home school. The parents, though willing to supply materials used in instruction, refused to permit any additional on site evaluation of their home school. The parents claimed that on site investigations were unnecessary, burdensome and harassing. The court provided:

> ". . . The educational law provides that if instruction is given elsewhere than in a public school, it must be given by a competent teacher and be at least substantially equivalent to that of a local school. . . . The burden of proof is upon

> respondents to show that substantial equivalent instruction is being afforded. . . . To satisfy this burden, it is sufficient to show a systematic course of studies being undertaken at home and that the parent is rendering quality instruction. (467 N.Y. Supp. 2d 318, 320)
>
> . . . Respondents have no absolute right to educate their children at home free from all state regulation or control: having chosen to utilize the statutory exemptions to public education, they must observe the reasonable requirements imposed upon home schooling by those charged with the responsibility for the childrens proper home education." (467 N.Y. Supp. 2d 318, 321)

The State of New Mexico v Edgington, 663 P. 2d 374 (CT. App. New Mexico, 1983) The Edgington children were being instructed at home using materials made available through the "Christian Liberty Academy" of Illinois. Both parents directed the home instruction although the wife conducted most of the studies. Neither parent held a teaching certificate but the mother had at one time been certified. The court held:

> "Decisions from other jurisdictions also provide us with rational for upholding attendance laws. For example in (Kansas) the court enforced an attendance law to prevent home instruction from becoming a pretense used to avoid the consequence of a truancy law. In (West Virginia) the court reasoned that attendance laws forced children to relate to those outside their family, thereby avoiding the sequestration of children on a rural homestead during all their formative years, to be released upon the world only after their opportunities to acquire basic skills had been foreclosed and there capacities to cope with modern society has been so undermined as to prohibit useful, happy, or productive lives. . . In each of the circumstances dealing above the state had a legitimate interest to promote.
>
> . . . Therefore we hold that the statutory classifications presented in the attendance law rationally relates to a legitimate state interest. The statute in question does not present an equal protection violation. States added parenthetically. (663 P 2d 374, 378)(Cities omitted in lieu of identification of states)

Burl v The State of Arkansas, 669 S.W. 2d 441 (S.CT. Arkansas, 1984) The parent decided to instruct his child at home. The court found that there was no indication that the parent wanted to open a school. There was no certified teacher conducting class and only the appellant and his wife acted as instructors. Neither of the parents had a college degree and the instruction was done from a correspondence course that was unapproved by the state.

The appellant contended that the compulsory educational statute of the state violated his first amendment right to free exercise of religion. The appellant made no showing of religious or cultural tradition nor that serious harm would result to the practices of his religious beliefs. The court did find that appellant was free to send his daughter to parochial school for a religiously orientated education. The court did not give the opinion that the parent does not have the right to give a child religious education at home and one of the concurring opinions was careful to point out that "nothing in the opinion even remotely suggests that parents are not fee to educate their children in a religious manner." (669 S.W. 2d 441, 444)

The court based its opinion, not on burdening religion but the overriding governmental interest in seeing that children were properly educated.

Mazanec v North Judson-San Pierre School Corporation, 614 F. Supp. 1152 (D.C. Indiana, 1985) The case involved home instruction by Jehovah Witnesses using materials prepared by the Santa Fe Community School. The court held:

> "Nor does this court have any difficulty in concurring with those courts that have found within the ambit of free exercise clause, a constitutional right to educate ones children in an educationally proper home environment, understanding that the state retains a legitimate interest in the fulfillment of certain minimal requirements as established legislatively and administratively as a matter of public policy. This court is aware of and concurs in the decisional line which honors the good faith efforts of parents to educate their children at home." (614 F. Supp. 1152, 1160)

Ellis v O'Hara, 612 F. Supp. 379 (E.D. Missouri, 1985) Plaintiffs in the case are two families and an organization know as Families for Home Education. The parents are Christians, who removed their children from public schools in order to pursue a course of home instruction. They believe that public school education promoted teaching ideas and values which were contrary to their religious convictions. The parents claim that the statute unnecessarily burdened their First Amendment rights to direct the educational upbringing of their children and to enjoy the free exercise of their religious beliefs. They further contend that the statute lacked guidelines and that the

standard of "substantially equivalent instruction" was unconstitutionally vague. The court used the standard for vagueness as:

> "A statute is unconstitutionally vague when it commands or prescribes conduct in terms so vague that persons "of common intelligence" must necessarily guess at its meaning and differ as to its application." (612 F. Supp. 379, 380)

The court then held:

> " . . . Nowhere is substantially equivalent defined, however, nor are regulations promogated which clarify its meaning. The Missouri courts have not furnished edification regarding the meaning of the statute. In this respect, the statute subjects the exercise of a fundamental right to an unassertainable standards . . . Of greater significance, is that the legislature has not provided minimal guidelines for law enforcement. . . . This statute represents a prime example of legislation which yields an unacceptable amount of discretion to a officials charged with its enforcement. The statute, therefore does not comply with due process requirements, and is unconstitutionally vague" (612 F. Supp. 379, 381)

The State of Ohio v Schmidt, 505 N.E. 2d 627 S. CT. (Ohio, 1987) The Ohio statute required application to be made to the Superintendent of the schools for approval of a home education program.

The defendants in this case were "Born Again Christians" who believed that it was their undelegatable duty as parents to educate their child themselves. The parents undertook instruction through a correspondence curriculum they obtained from the Winchester Christian Academy of Columbus, Ohio. The parents actually enrolled their daughter as a student at the Winchester Christian Academy, but she never attended any classes there.

When the fact became known that the child was not attending school at the Academy, the Superintendent of schools informed the parents that they were required by Ohio Law to obtain approval from his office for home education. The parents did not seek approval because they felt their religious beliefs not only required them to educate their child but also forbade them from seeking permission to do so. The court applied a three part test to determine whether the minimum standards promogated by the State Board of Education impermissibly infringed upon the rights to

the free exercise of religion upon the parents of children attending a non-public school. The test the court applied was:

> "1. Are the religious beliefs truly held?
> 2. Has it been shown that the approval requirement of R.C. 3321.04 (a)(2) infringes upon appellants constitutional right to the free exercise of religion?
> 3. If both 1 and 2 have been satisfied by appellants, has the state demonstrated that its compelling interest in the education of its citizens cannot reasonably be achieved by means that would impose a less infringement upon the appellants rights to the free exercise of religion?" (505 N.E. 2d 627, 629)
>
> *This standard provided by the court was taken from State v Whisner, 47 Ohio S.T. 2d 181, 351 N.E. 2d 750 (1976)*
>
> . . . We hold that the requirements under R.C. 3321.04 (a)(2), that parents must seek the approval of the Superintendent for their home education program in order to obtain an excuse from the compulsory attendance laws, reasonably furthers the state's interest in the education of its citizens and does not infringe upon the free exercise of religion." (505 N.E. 2d 627, 630)

In re Jeffery v O'Donnell, 702 F. Supp. 513 (M.D. Pennsylvania, 1987) The parents contended that the Pennsylvania law governing home schooling was invalid because it gave the school Superintendent discretion that was too broad in determining the standards for the approval of home schooling. The court held:

> "The governmental interest at issue in this case is the assurance that the children receive an education. Home Schooling in and of itself is not contrary to the government interest here since, as mentioned, the state specifically allows for home schooling. Furthermore, there is nothing in the present case which indicates that the parental desires are counter to the governmental interest." (702 F. Supp. 513, 515)

Care and Protection of Charles, 504 N.E. 2d 592 (Massachusetts, 1987) Due to the religious convictions of the parents, they decided to educate their three children, ages 11, 8, and 6, at home. The school committee of the community initiated truancy procedures asserting violations of the compulsory attendance law by the parents. The parents had informed the Superintendent by

telephone and by letter of their intention to provide education for their children at their home. They based it on the notion that as Christian parents they were committed to introducing their children to and nurturing them in the truth of the Bible. They stated that their decision was based on their convictions that their children needed exposure to their parents and family whose foundation was based on the word of God. The parents explained that the curriculum they were going to use was customary to Christian schools. Neither parent was certified to teach nor had a college degree. Both were high school educated. The parents were unwilling to provide the school authorities with the number of hours and days that would be devoted to instruction and they were opposed to visits by the school department personnel to his home for observation of the program. He was willing to provide the administration with copies of the table of contents of the curriculum materials, when they arrived, and his preference to use a particular standardized test when he evaluated the childrens progress.

The school committee refused to grant permission on four grounds:

1. The Superintendent had not been given reason to believe the parents were competent to teach their children. 2. The parents had indicated the children would spend less time in formal instruction than would children in the public school. 3. The parents objected to the school's effort to monitor or observe the instruction and 4. The parents objected to periodically testing the children. The court held:

> "While the parents contend, and we agree, that they possess the basic right to direct the education of their children, such a right is not absolute but must be reconciled with the substantial state interest in the education of its citizens. (504 N.E. 2d 592, 599)
>
> . . . Underlying guidelines for approval of home education plan . . . As the statute indicates, approval must be obtained in advance, prior to the removal of the children from the public schools and to the commencement of home schooling program. . . . The Superintendent or school committee must provide the parents with an opportunity to explain their proposed plan and present witnesses on their behalf. . . . The parents bear the responsibility of demonstrating that the home schooling proposal meets the requirements of the statute in that the instruction will equal in thoroughness

> and efficiency, and the progress made therein that in the public schools in the same town . . . If the proposal is rejected, the Superintendent must detail the reasons for the decision. The parents must then be given an opportunity to revise their proposal, to remedy the inadequacies. . .
>
> The Superintendent or school committee may properly consider the length of the proposed home school year and the hours of instruction in each subject. . . The Superintendent or school committee may also examine the competency of the parents to teach the children. . . . While we recognize that teachers in the public school must be certified, certification would not appropriately be required for parents under home school proposal. . . . . .The Superintendent or school committee must also have access to the text books, workbooks, and other instructional aides to be used by the children and to the lesson plans and teaching manuals to be used by the parents. This access is necessary only to determine the type of subjects to be taught and the grade level of the instruction for comparison purposes with the curriculum of the public schools. . . . Finally, the Superintendent or school committee may properly require periodic standardized testing of the children to ensure educational progress and the attainment of minimal standards." (504 N.E. 2d 592, 600-602)

The People of The State of Colorado in the Interest of D. B., K.B., S.B., and D.B. 767 P. 2d 801 (Colo. App., 1988) The executive of school district No. 3 filed a petition in order to compel the father of four children, ages 7 to 15 requiring the children to attend public school. The juvenile commission entered an order finding that the father was in compliance with the school attendance laws of the state and denied the petition. The children were enrolled in the Patriot Christian Academy in Salida, Colorado. They pursued their daily course work in their home in Colorado Springs and reported to the campus in Salida periodically for testing. The father offered to make the test results available to the school system.

The school district contended that because the children were pursuing their studies at home they must either be instructed by a certified teacher or be instructed under an established system of home study approved by the State Board of Education. The court held:

> "Since the district has not challenged the adequacy of the education provided by the Academy, the matter of sufficiency of the childrens attendance is between them and the independent school in which they are enrolled." (767 T. 2d 801, 802)

Murphy v State of Arkansas, 852 F. 2d 1039 (8 Cir., 1988) The parents were Evangelical Christians who believed that Christian Scriptures required parents to take personal responsibility for every aspect of their childrens training and education. They had six children ages 4-18. They educated their children at home providing an education that was pervasively religious in nature and did not conflict with the religious beliefs they held.

The Arkansas Home School Act required parents intending to school their children to notify in writing the Superintendent of the school district prior to the commencement of each school year. The notice had to provide information concerning name, age and grade of each student, the core curriculum to be offered, the schedule of instruction and the qualifications of the person teaching. The parent had to agree to submit the children to standardized achievement tests each year and when the children reached the age of 14, to a minimum performance test. All test were administered, interpreted, and acted upon by the Arkansas Department of Education. Finally, parents had to provide any information to the Superintendent which might indicate the need for special education services for the children. The achievement test administered to the students was chosen by the parents from a list of nationally recognized tests. The parent could be present during the testing.

The results of the tests were used to determine if a child had achieved a composite score within an eight month range to the grade level of the designated subject. A child failing to make such achievement, had to be placed in a public, private or parochial school. There were no annual tests required of students registered in public, private or parochial schools.

The parents alleged that the Arkansas statute deprived them of the right of free exercise of religion, the right to due process, the right of equal protection, and the right of privacy. The court held:

> "Given the existence of a compelling government interest, we must next enquire whether Arkansas home testing system is the least restrictive means to achieve that purpose. . . . Upon examination, it would appear that Arkansas has created the lease restrictive system possibly to assure its goal. By providing the option of home schooling, Arkansas allows parents vast responsibilities and accountability in terms of their childrens education-control far in excess of limitations on the religious rights that have been previously upheld.(852 F. 2d 1039, 1042)

> In the end, we believe that the state has no means less restrictive than its administration of achievement tests to ensure that its citizens are being properly educated." (852 F. 2d 1039, 1042)

Blackwelder v Safnauer, 689 F. Supp. 106 (N.D. New York, 1988) The plaintiffs were the parents of two school age children. They resided in Cato-Meridian Central School District. The district required conditional approval of all proposed alternative educational programs, including home schooling programs, prior to the commencement of the academic year for which approval was sought.

Families wishing to educate their children at home had to submit a proposed calendar, curriculum, list of text books, syllabus and standardized testing schedule. The school system had to be apprised of the credentials and life and occupational experiences of the instructors who would conduct the home program. Finally, the approval was contingent upon the results of a scheduled visit to the home where the alternative instruction is to be given by a team of representatives of the local board of cooperative educational services. Ordinarily, there was to be one or two scheduled on site inspections during the school year.

The plaintiffs wanted to educate their children at home for religious reasons, but refused to permit any on site visits. The parents did not recognize the jurisdiction of the school district or the state to regulate their childrens education.

The court determined that there was no dispute. That the plaintiffs desire to educate their children was founded upon religious concerns and their instruction was an attempt to integrate the fundamentalist Christian views in all aspects of the childrens education. The court was unclear how the requirements of the state education law conflicted with those beliefs and how the manner in which the requirement was enforced by the local and state district impinged upon the plaintiffs religious practices and constitutional rights. The court determined that there was a certain distrust of public school officials among home schoolers, including the plaintiffs, and that was the underlying reasoning for the objections to the statutory requirements enforced by the state. The court determined that the state had a fundamental interest in assuring that its citizens were prepared to participate in the nation's political and economic system, and that those interests by the state may

collide with the values of the parents concerning the direction of the religious upbringing and education of their children. The court relying upon Yoder held:

> "Unless a child is a member of an identifiable religious sect with a long history of maintaining a successful community separate and apart from American Society in general, it must be assumed that that child must be intellectually, socially, and psychologically prepared to interact with others who may not share the views of the parents. . . . A states interest in establishing standards for the education of its young in order to prepare them for participation in political and economic processes as well as to "nurture and develop their human potential" overrides the interest of parents to teach their children in a religious school or at home free from government interference. (689 F. Supp. 106, 135)
>
> No state interference with the religious training given students attending such schools is contemplated by this sort of state interaction with plaintiff schools that would be required if immediate approval of those was not obtained. The present case simply lacks the pervasive government presence that has been found offensive in the establishment clause cases plaintiffs rely on. Defendants are entitled to summary judgment on the establishment clause claim raised by the Blackwelders and Lonnevilles in their mini complaint." (689 F. Supp. 106, 145)

Matter of Blackwelder, 528 N.Y. Supp. 2d 759 (S.CT. New York, 1988) This is another case where the parents refused to allow the school authorities access to their home in order to determine the adequacy of the instructional facility. The court held:

> "The respondents, having elected to utilize home instruction, have the duty to allow the home study program to be evaluated by the Superintendent of schools to determine if it is substantially equivalent. The Superintendent has the authority to make reasonable requests of the respondents in order to make such a determination. Evaluation of the curriculum, evaluation of the teachers credentials, on-site evaluation of the setting and teaching process, and periodic testing are reasonable requests."(528 N.Y. Supp. 2d 759, 762)

Blount v Department of Education and Cultural Services, 551 A. 2d 1377 (Maine, 1988) The compulsory education statute required that the children attend public day school or obtain equivalent education that was approved by the Commissioner of Education and Cultural Services.

The parents have agreed to provide all of the information that school officials requested but only if they were assured that the information would not be used in some form of approval process.

The parents, when notified that their home school had been approved, wrote a letter to the Commissioner indicating that they had never asked for approval and that they would no longer share information with the school committee if the committee might use the information in an approval process. The parents contend that the licensing power asserted by the state violated the free exercise clause of the First Amendment imposing a burden upon their religious beliefs. The court upon receiving proof that there was a substantial burden on the parents religious beliefs required the state to show that its requirement of prior approval for home schooling was motivated by a compelling public interest and that there was no less restrictive means for achieving that interest. The court held:

> "Thus, it is settled beyond dispute, as a legal matter, that the state has a compelling interest in assuring that all its citizens are being adequately educated. . . . For the state to set educational standards that home schooling parents must follow, but then give plenary enforcement power to the parents themselves, would establish a regime of voluntary compulsory education. Universal education is too precious to our society to allow some parents to opt out, however high their motives." (551 A. 2d 1377, 1382)

Jeffrey v O'Donnell, 702 F. Supp. 516 (N.D. Penn., 1988) The parents were Bible Believing Christians who professed that they were motivated to educate their children at home. They filed a motion for summary judgment on the theory that the Pennsylvania law of compulsory education was unconstitutionally vague and thus in violation of due process clause of the 14th amendment. In addition, they argued that the statute violated the free exercise and establishment clauses. The court found that the law was unconstitutionally vague providing:

> "Pennsylvania Department of Education has issued regulations which lack definition of a "qualified private tutor", but provide for student not enrolled in the public schools due to private tutoring. Such regulations state that private tutoring by properly qualified tutors shall be subject to the annual approval of the district Superintendent of the schools, and that Superintendents approval of a tutor shall be acceptable evidence of the tutors ability to teach." (702 F. Supp. 516, 519)

People of the State of Michigan v DeJonge, 445 N.W. 2d 503 (Mich. App. 1989) The parents kept their children home from school for instruction. The mothers of the children served as teachers. The parents claimed that their home school was exempt from law which required children not in a public to attend a state approved non-public school.

When the school authorities discovered that the DeJonge children were not attending public school, the parents were notified and informed that the law required the children be taught by a certified teacher. The DeJonges taught their children through a program administered by the church of Christian liberty and Academy of Arlington, Illinois. The family belonged to the Grand Valley Orthodox Christian Reform Church and believed that the responsibility of the education of their children was given by God to the parents.

The issue addressed by the court was; Does the requirement of certification of teachers in home schooling violate the First Amendment right to freedom of religion? The court in arriving at its conclusion used a four part test. The test was:

> 1) Is the belief, or conduct motivated by the belief religious in nature, 2) Does the state regulation impose any burden on the exercise of those beliefs, 3) Does some "compelling state interest" justify the burden imposed, and 4) Is there a less obtrusive form of regulation available to the state. (445 N.W. 2d 503, 508)
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> . . . We find that the burden imposed in the DeJonges religious belief by the state certification of teachers is minimal. . . .The DeJonges religious beliefs do not prohibit them from hiring a certified teachers. The DeJonges have failed to show they cannot hire a certified teacher who meets their qualifications. (445 N.W. 2d 503, 508)
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> We find that the certification requirement is the lest obtrusive means of achieving the states interest. . . Curriculum and attendance requirements insure that the student and the educational materials are in the same place at the same time. However, they do nothing to insure that the material in imparted to the child in such a way as to be understandable. Alone they are unlikely to stimulate intellectual curiosity inquiry or to cause that fascinating conjunction of superficially incompatible facts that is creative thought. State licensure does not guarantee quality teachers. But one cannot ignore the high likelihood

that a person who meets the qualifications for certification has absorbed the knowledge a competent teacher should have." (445 N.W. 2d 503, 509)

SECTION 3

A STATUTORY ANALYSIS

Parents in states lacking explicit statutory provisions to educate their children at home have instituted litigation on three often inter-related causes of action: by raising free exercise claims under the First Amendment, by alleging due process violations under the Fourteenth Amendment, and by challenging the compulsory education laws of their states. The result is that home schooling is now legal in all 50 states. Since case law has been comprehensively addressed in the first part of this paper, this section does not intend to review the same. Rather, it completes the picture by presenting an analysis of state laws and regulations affecting and implementing home schooling.

The power of the state to regulate education is founded in the common law doctrine of parens patriae which maintains that the state, as the "parent of the country," has the prerogative to act as guardian of its citizens in order to provide for their well being. Given the role that education has played in shaping American history and society, it is not surprising that compulsory education laws were among the earliest and most far reaching forms of state regulation of

education.

Since home instruction requires an exception from state compulsory attendance laws, a brief examination of the nature and status of these laws is necessary for two reasons. First, although compulsory attendance laws have generally survived attacks on free exercise or due process grounds, challenges to these laws, unlike under the First and Fourteenth Amendments have provided home school parents with a modicum of success. In fact, the compulsory attendance laws of six states (Georgia 1982; Wisconsin, 1983; Minnesota, 1985; Missouri, 1985; Iowa, 1987; Pennsylvania, 1988) have been successfully challenged in the past eight years on the ground that they were unconstitutionally vague. Second, and perhaps more significantly, governmental control over education through compulsory attendance laws provides a natural introduction to state laws on home schooling.

Compulsory Attendance Laws

Compulsory education laws were enacted in the 19th Century to eliminate child labor and to battle truancy. As the purpose these laws was not so much to mandate where children were educated as they were to insure that children were educated, it was inevitable that compulsory attendance laws would be challenged. Perhaps the greatest challenge to compulsory attendance laws was in the landmark case of Pierce

v. Society of Sisters. In Pierce, the United States Supreme Court held that parents could not be compelled to send their children to public schools. Consequently, states have modified their compulsory attendance laws to provide parents with greater control over where they may have their children educated. These modfications have been implemented by permitting attendance in private schools or by home schooling.

In the conflict over who should control the education of American children, a delicate balance must be maintained. On the one hand is is the right of parents or guardians to be free from unreasonable state interference in providing for the education of their children. On the other hand is the right of the state, under parens patriae, to ensure the welfare of its citizens (and itself) by establishing and enforcing reasonable school attendance laws and educational standards. The tension between these two occasionally adversarial interests has been resolved in a growing number of states by expanding traditional notions of "equivalent" instruction to accomodate the increasing numbers of home schooling families. That is, the legislative response is indicative of a trend towards accomodating parents who wish to educate their children at home. This paper, then, examines the legislative and regulatory response of the

states to home schooling under three major divisions: the legal status of home schooling; state regulations governing home schooling; and student assessment.

The Legal Status of Home Schooling:

Analysis and Classification of State Laws and Regulations

The rapidly growing body of case law on home schooling has been accompanied by a burgeoning legislative response. Prior to 1982 only two states (Nevada, 1965; Utah, 1957) had laws explicitly recognizing home schooling as an educational option available to parents; a third state, Ohio, mentioned home schooling but did not explicitly permit it.

Summary of Statutes on Home Schooling

I. State regulation of home schooling

a) 28 States have explicit statutes legalizing home instruction:

Arizona, Arkansas, Colorado, Florida, Georgia, Hawaii, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire (new law to be in effect 7/1/91), New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

b) 4 States permit home schooling under administrative rules or regulations:

Maine, Maryland, New York, Ohio.

c) 8 States permit home instruction under "equivalency" statutes:

Connecticut, Delaware, Idaho, Indiana, Kansas, Massachusetts, New Jersey, South Dakota.

d) 10 States permit home schooling under "private/non-public school" statutes:

Alaska, Alabama, California, Illinois, Iowa, Kentucky, Michigan, Nebraska, Oklahoma, Texas.

II. State Regulations Concerning Instructional Matters

a) State/ Local Approval

20 States explicitly require the approval of state or local educational officials/agencies before parents can educate their children at home. These requirements do not apply under all circumstances and for all options or plans regulating home instruction:

Alabama, Arizona, Arkansas, Connecticut, Delaware, Idaho, Iowa, Massachussets, Maine, New Hampshire (but not under new law), New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Virginia, West Virginia.

b) Notification Requirements

40 States explicitly requiring registration with or notification to state or local educational officials.

c) Teacher Qualifications

29 States have no explicit regulations concerning teacher qualifications where home instruction is provided by the parents:

2 states require a certified teacher in all circumstances (Iowa, Michigan) and 1 state (North Dakota requires that an individual be certified or certifiable or work under a certified teacher or has passed the NTE);

2 states require minimum scores on standardized test (Arizona, South Carolina [a suit is challenging this];

2 state includes the NTE as an option here (North Dakota, West Virginia);

4 states require a high school diploma or GED (Georgia, North Carolina, Ohio, Pennsylvania);

6 states require at least some college but also provide for exceptions (New Mexico, South Carolina, Tennessee, Virginia, Washington, West Virginia);

5 states require teachers to be "competent," "qualified," or "capable of teaching" (California, Kansas, New York, Ohio, South Dakota).

Most states impose more stringent requirements where home instruction is provided by an individual other than the parent.

d) Areas of Instruction

With the exception of Mississippi (no requirements) all states either identify specific subject areas for instruction or require that the course of instruction be compatible with that of the public schools of the state.

e) Length of Instruction

The typical home school statute requires 175-180 days of instruction or the same number of days of instruction as provided in the local school district.

Most states are silent on the amount of time that must be required to instruction during the "school day."

III. Student Assessment Under Home Schooling

a) 21 states do not explicitly require student testing.

b) The 29 states requiring assessment fall into a variety of categories:

15 states require standardized testing in all circumstances: Arizona, Arkansas, Colorado, Georgia, Hawaii, New Hampshire (as of new law), North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Washingtom, Virginia, West Virginia.

14 states have it as an option among other choices: Alaska, Delaware, Florida, Kentucky (only upon transferring into public school from home instruction), Louisiana, Maine, Massachussetts, Minnesota, Nebraska,

Nevada, New York (for high school only; lower grades need not be standardized), Ohio, Utah.

Table of Cases
Home Schooling

Blackwelder v Safnauer, 689 F. Supp. 106 (N.D. New York, 1988)

Blount v Department of Education and Cultural Services, 551 A. 2d 1377 (Maine, 1988)

Burl v The State of Arkansas, 669 S.W. 2d 441 (S. CT. Arkansas, 1984)

Care and Protection of Charles, 504 N.E. 2d 592 (Massachusetts, 1987)

Cleary v Lash, 401 N.Y. Supp. 2d 124 (Family Court NY, 1977)

City of Akron v Lane, 416 N.E. 2d 642 (CT. App. Ohio, 1979)

Delconte v The State of North Carolina, 308 S.E. 2d 898 (ST. App. N.C., 1983)

Delconte v The State of North Carolina, 329 S.E. 2d 636 (S. CT. North Carolina, 1985)

Ellis v O'Hara, 612 F. Supp. 379 E.D. (Missouri, 1985)

Garren County v Thompson, 24 Okl. 1, 103 P 2d 578

Grigg v Common Wealth of Virginia, 297 S.E. 2d 799 (S. CT. Virginia, 1982)

In the Interest of Anna Sawyer. In the Interest of Matthew Sawyer., 672 P. 2d 1093 (S. CT. Kansas, 1983)

In Jeffery v O'Donnell, 702 F. Supp. 513 (M.D. Pennsylvania, 1987)

Jeffery v O'Donnell, 702 F. Supp. 516 (N.D. Penn., 1988)

Matter of Blackwelder, 528 N.Y. Supp. 2d 759 (S. CT. New York, 1988)

In the Matter of John Kilroy, 467 N.Y. Supp. 2d 318 (N.Y. Family Court, 1983)

Mazanec v North Judson-San Pierre School Corporation, 614 F. Supp. 1152 (D.C. Indiana, 1985)

in re Monnig, 638 S.W. 2d 782 (CT. App. Missouri, 1982)

Murphy v State of Arkansas, 852 F. 2d 1039 (8 Cir., 1988)

People v Levisen, 90 N.E. 2d 213 (S. CT. Ill., 1950)

The People of the State of Colorado in the Interest of D.B., K.B., S.B., and D.B., 767 P. 2d 801 (Colo. App., 1988)

People of the State of Michigan v DeJonge, 445 N.W. 2d 503 (Mich. App., 1989)

Pierce v Society of Sisters, 268 US 510, 45 S.CT. 571 (1925)

Sheppard v The State of Oklahoma, 306 P. 2d 346 (CT. App. Oklahoma, 1957)

State of Missouri v Cheney, 305 S.W. 2d 892 (CT. App. Missouri, 1957)

State of New Jersey v Massa, 231 A. 2d 252 (New Jersey, 1967)

The State of New Mexico v Edgington, 663 P. 2d 374 (CT. App. New Mexico, 1983)

The State of Ohio v Schmidt, 505 N.E. 2d 627 S. CT. (Ohio, 1987)

State of Oregon v Bowman, 653 P. 2d 254 (CT. App. Oregon, 1985)

The State v Peterman, 32 Ind. App. 665 (1904)

State of West Virginia v Riddle, 285 S.E. 2d 359 (W. VA., 1981)

State v Whisner, 47 Ohio S.T. 2d 181, 351 N.E. 2d 750 (1976)

Wisconsin v Yoder, 406 US 205, 92 S. CT. 1526 (1972)